**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929**

**WP(C).No. 31931 of 2007(B)**
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**PETITIONERS:**
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1. **JACOB JOSEPH TALIATH, AGED 50 YEARS, S/O.LATE DR.GEORGE TALIATH, 8B, BELAIR APARTMENTS, PANAMPALLY NAGAR, COCHIN - 36.**

2. **MRS.MARY GEORGE TALIATH, AGED 70 YEARS, W/O.LATE DR.GEORGE TALIATH, 8B, BELAIR APARTMENTS, PANAMPILLY NAGAR, COCHIN - 36.**

**BY ADV. SRI.GEORGE VARGHESE.**

**RESPONDENTS:**
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1. **INLAND WATER WAYS AUTHORITY OF INDIA, REGIONAL OFFICE, 2347 N - PARAMARA SHOPPING COMPLEX, PARAMARA ROAD, COCHIN - 18.**

2. **THE SPECIAL TAHSILDAR (LA.), VYTTILA, ERNAKULAM.**

3. **STATE OF KERALA, REPRESENTED BY THE THE DISTRICT COLLECTOR, ERNAKULAM.**

**BY GOVT. PLEADER SMT. BINDU.R,**
**SRI. P. PARAMESWARAN NAIR, ASST. S.G,**
**ADV. SRI.V.SANTHARAM, SC, IWAI.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**W.P.(C). NO.31931/2007:**

## APPENDIX

**PETITIONER'S EXHIBITS:**

**EXT.P.1: COPY OF THE I.A. NO. 5711/2007 IN O.S. O. 29/03 OF SUB COURT, ERNAKULAM DTD. 14/09/2007.**

**EXT.P.2: COPY OF THE ORDER IN I.A. 5711/07 RECORDED IN THE `A' DIARY OF PRL. SUB COURT, ERNAKULAM ON 2/10/2007.**

**RESPONDENT'S EXHIBITS: NIL.**

**//TRUE COPY//**

**prv.**

**M.N.KRISHNAN, J**

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**W.P.(C) No.31931 OF 2007**

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**Dated this the 7th day of December 2007**

**JUDGMENT**

This writ petition is preferred against the order of the Sub Court, Ernakulam in I.A.No.5711 of 2007 in O.S.No.29 of 2003. It is an application filed by the plaintiffs to examine them as well as the addl.Tahsildar as witnesses. The court by the impugned order declined permission to examine the plaintiffs, but allowed the examination of the addl.Tahsildar. The Court declined permission on the ground that other witnesses had been examined and as per Order 18 Rule 3-A of the C.P.C. the party must get himself examined first unless the court for the reason to be recorded permits him to appear as his own witness at a later stage. A reading of the writ petition would reveal that the plaintiffs had filed a proof affidavit before the court. They were present on one occasion, but the counsel for the first defendant was not available. Then it is averred that the court opined that it is a case where oral evidence need not be there, but marked the documents. It was only on account of these developments, plaintiffs were not examined. I think there is reasonable explanation

tendered and the suit is one for recovery of possession where the examination of the plaintiffs is necessary for a proper disposal of the case. Unlike other cases in a case of this nature even if the plaintiffs are examined at a belated stage it will not affect the result of the suit or it will not cause any prejudice to the other side.

Taking into consideration the special circumstances mentioned, I feel interest of justice demands that the plaintiffs must be given an opportunity to examine themselves. Therefore, I modify the order of the court below and permit the plaintiffs also to get themselves examined as witnesses before the court. Plaintiffs shall be present when so directed by the court below, fix a date in consultation with other counsel and the matter be proceeded in accordance with law.

Writ petition is disposed of as above.

**M.N.KRISHNAN, JUDGE**

**Cdp/-**